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IN THE
COURT OF APPEALS OF INDIANA

ROBERT D. KREB, JR., d/b/a CONVENANT FLIGHT GROUP,	)	
Appellant-Plaintiff,	)	
vs.	)	No. 48A04-0604-CV-228
FOGHORN FLITE, LLC; WARREN HUNTZINGER, INDIVIDUALLY AND SCOPE LEASING, INC.,	)	
Appellees-Defendants.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0603-PL-288

September 15, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Plaintiff, Robert D. Kreb, Jr., d/b/a/ Covenant Flight Group (Kreb), appeals the trial court's denial of his request for a preliminary injunction against Appellees-Defendants, Foghorn Flite, LLC, (Foghorn), Warren K. Huntzinger (Huntzinger), and Scope Leasing (Scope) (collectively, Appellees).

We affirm in part and reverse in part.

ISSUES

Kreb raises two issues on appeal, which we restate as:

(1) Whether the trial court abused its discretion in concluding that Kreb failed to prove he is entitled to a preliminary injunction thereby giving him possession of the aircraft; and

(2) Whether the trial court erred in ordering Kreb to return all logbooks, flight logs, and maintenance records.

FACTS AND PROCEDURAL HISTORY[1]

On June 30, 2005, Kreb and Foghorn entered into an aircraft lease-purchase agreement (the Lease) whereby Foghorn leased a 1996 Pilatus PC-12/45 aircraft (the

[1] Even though it is not this court's tradition to regularly comment on the parties' factual recitation, we cannot help but do so in this case. At times, Appellant's factual statement makes assertions unsupported by the record and when citations are included, they are complicated to decipher leaving it to this court to hunt through Appendices, Transcripts, and Exhibits in search of the referenced document. However, we do accept Appellant's apologies for his failure to strictly comply with Indiana Appellate Rule 22(C), as phrased in his Reply Brief. On the other hand, while Appellees Foghorn and Huntzinger initiate their Brief complaining about Appellant's citations, their own factual recitation is severely lacking in completeness. The facts of this case are complicated and convoluted, warranting more than their cursory one-page Statement of Facts.

Aircraft) to Kreb. Scope holds a secured lien on this Aircraft in the sum of approximately $1,200,000. Pursuant to the terms of the Lease, Kreb would pay a base monthly rent of $20,000, increased by an hourly $40 operating charge calculated at the end of the month and based on the Aircraft log's determined usage. Additionally, the Lease provided Kreb with an option to purchase the Aircraft. In this regard, Article XV states in pertinent part that:

> XV. PURCHASE OBLIGATION
>
> On that date which is six (6) months after the Effective Date, [Kreb] shall be obligated to purchase and [Foghorn] shall be obligated to sell the Aircraft upon the price and terms set forth in this Section [], OR, [Kreb] shall be obligated to additional deposits in the amount of One Hundred Fifty Thousand and no/100 dollars ($150,000.00) to continue under the Lease [t]erms herein and payable to [Foghorn]. [Kreb] may otherwise exercise its purchase obligation at any time during the term of this Lease provided a minimum of thirty days (30) written notice of the execution is given to [Foghorn].
>
> On that date which is twelve (12) months after the Effective Date [], [Kreb] shall be obligated to purchase, and [Foghorn] shall be obligated to sell the Aircraft upon the price and terms set forth in this Section XV.

(Appellant's App. p. 249).

Kreb used the Aircraft to conduct commercial operations for passenger service and cargo delivery. In December of 2005, Kreb and Huntzinger, Foghorn's president, entered into negotiations for the possible purchase of the Aircraft, as provided under the Lease. On December 19, 2005, Huntzinger notified Kreb of his intention to discontinue the Lease and indicated that he wanted to close a purchase of the Aircraft as soon as possible. By letter dated December 27, 2005, Kreb advised that in order to purchase the Aircraft at that time, he would "need the $150K allotted as security for a lease renewal to apply as

security on the finance of the [A]ircraft." (Appellant's App. p. 320). Kreb clarified in this letter that he could not "relinquish this security AND amend the lease renewal to acquire the [A]ircraft before June 2006." (Appellant's App. p. 320). Huntzinger replied by letter dated December 29, 2005, making the following proposition:

> I am willing to make the following proposition to you, at this time, in order to place you in a situation where by you may become the owner of [the Aircraft] at the earliest possible time. This would eliminate all the other possibilities that could arise after January 2, 2006.
>
> > A. You assume my loan of $1,200,000.00 with [Scope] or get your own loan for that amount or more.
> >
> > B. The $75,000.00 option money paid plus the engine reserve amount will be credited to the balance due of $800,000.00.
> >
> > C. The difference (approximately $715,000.00) I would carry for you on a note and second lien payment payable monthly at seven percent (7%) interest.
>
> This would need to be decided immediately. If you need anytime to make this decision, you must send me the additional $150,000.00 option money, plus the December payment and engine time money. If you choose this plan you must get the money to me in a timely manner, and I will extend this time limit for purchase to January 31, 2006.

(Appellant's App. p. 321).

Kreb acted on Huntzinger's proposal by seeking a financing commitment from JODA Aircraft Financing, LLC (JODA) to enable him to purchase the Aircraft. On December 30, 2005, Huntzinger indicated to Kreb that he "had another offer sitting on the table that he would entertain if [Kreb] would not close by the 10th of January." (Transcript p. 119-A). On January 6 or 7, 2006, Kreb told Huntzinger that Huntzinger would have to sign and agree to a document with a subordinate position which was a

requirement in JODA's financing. According to Kreb, Huntzinger agreed to this condition. Consequently, on January 11, 2006, ABCO Leasing faxed a memo to Huntzinger confirming Kreb's financing for the purchase of the Aircraft, and stating:

> Confirmation herewith issued this date for the finance of [the Aircraft] subject to pre-buy inspection to be immediately conducted by Preston Estes at the Pilatus Service Center in South Carolina. It is anticipated that final documents will be available for sign off and closing by no later than January 20, 2006.

(Appellant's App. p. 312).

On January 13, 2006, Foghorn faxed a letter to Kreb terminating the Lease "due to the default of the December 2005 payment as per paragraph XI. . .. Also, of the default of an additional $150,000.00 option payment to continue the [L]ease for an additional six months."[2] (Appellees Exhibit B). Thereafter, on January 23, 2006, Huntzinger's counsel faxed a message to Kreb's counsel demanding immediate possession of the Aircraft and adding "Negotiation for sale, if any will occur after possession of the [A]ircraft. There was no agreement of the parties after the failure of [Kreb] to make the $150,000.00 payment due at the end of December." (Appellees Exhibit A).[3]

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[2] However, all parties now agree that Kreb did not default his December 2005 Lease payment. Accordingly, the only dispute resolves around the additional option payment to continue the Lease for another six months.

[3] We acknowledge that Kreb's counsel communicated with Huntzinger's counsel by letter of January 20, 2006 and again by letter of January 23, 2006. Because these documents were not before the trial court, Appellant now attempts to admit both documents pursuant to Ind. Appellate Rule 34(F) which provides:

> When the motion, response, or reply relies on facts not contained in materials that have been filed with the Clerk, the motion, response, or reply shall be verified and/or accompanied by affidavits or certified copies of documents filed with the trial court clerk or Administrative Agency.

Our review of the record indicates that these letters were originally filed together with Kreb's Verified Motion for Expedited Consideration of his interlocutory appeal, appealing the trial court's termination of a restraining order. Kreb's motion was granted by this court on June 2,

On February 6, 2005, at approximately 2:25 p.m., Huntzinger's counsel faxed a revised offer to Kreb, stating, in pertinent part,

> [I]t is apparent that in spite of Kreb's several breaches of the parties' contract, [Kreb] ha[s] determined to purchase the subject airplane for $2,000,000.00 as provided in Legal Paragraph XV of their agreement.
>
> You are hereby put on notice that [Foghorn] is ready, willing and able to sell said plane to [Kreb] on the following terms and conditions:
>
> (1) This proposal must be accepted within forty-eight (48) hours after your receipt of said proposal via facsimile. Acceptance must be in writing via facsimile to this office as to all terms herein stated.
>
> (2) [T]he closing shall be on or before February 28, 2006, by and through the escrow services of Insured Aircraft Title Services, Inc. [] and the other terms and conditions, specifically as set out in Legal Paragraph XV of the parties' [Lease] dated June 30, 2005, shall apply.
>
> (3) At closing[,] [Kreb] shall produce the sum of $1,925,000.00 in a form satisfactory to Insured Aircraft Title Services, Inc.
>
> (4) Also at closing, [Kreb] shall produce notarized copies of the Airplane Log Book(s) for the period commencing June 30, 2005, to February 28, 2006, or the date of closing.
>
> (5) Upon receipt of the Airplane Log Book(s): Seller, [Foghorn,] will reconcile the rent due pursuant to the parties' contract []. Should the reconciliation result in a credit toward the purchase of the [Aircraft], Foghorn shall, no later than thirty (30) days following closing, reimburse the difference to [Kreb]. Should the reconciliation reveal a rental debit balance, [Foghorn] shall keep the $75,000.00 heretofore paid and the difference shall be forgiven by [Foghorn].

2006. However, Indiana Appellate Rule 34(F) clearly states that additional materials may be submitted under certain circumstances only when the *motion* relies on these omitted materials. Merely because Kreb's motion might rely on these omitted materials, does not ensure the materials' availability for our review of Kreb's appeal. We caution counsel that Indiana Appellate Rule 34(F) cannot be used as a vehicle to circumvent our long established rule that documents that were not presented to the trial court and are not properly part of the trial court's record fall outside our review.

> (6) That [Kreb] shall bear the risk of loss up to the point of the actual title transfer as to insurance, maintenance and usages as provided by the parties' June 30, 2005 contract.
>
> Should [Kreb] fail to accept this proposed and negotiated settlement in writing within forty-eight (48) hours of receipt of this facsimile correspondence by [Kreb's counsel]; then [Kreb] shall forfeit all rights to purchase the subject airplane and the $75,000.00 option money shall be deemed forfeit. Such failure to accept this proposed and negotiated settlement as provided herein within forty-eight (48) hours shall in an of itself release [Foghorn] to sell the subject airplane to whomever [Foghorn] shall choose without regard to alleged purchase interest or color of title [Kreb] may allege or assert.
>
> Should [Kreb] in writing accept this proposed and negotiated settlement within forty-eight (48) hours as herein provided, but fail to close as provided herein; not only shall Covenant, but also [Kreb] personally, shall assume all liability and consequential damages including, but not necessarily limited to all costs of litigation, [Foghorn] attorney's fees and other costs of litigation.

(Appellant's App. pp. 266-67). The remainder of the letter contained additional terms outlining the terms in case Kreb failed to accept the offer.

That next day, at around 4:45 p.m., Kreb's counsel replied accepting Huntzinger's new terms as set forth in his counsel's letter in paragraphs 1-6 and added "[a]s we are accepting your proposal to purchase the [Aircraft], we will not address the remainder of your letter which we think [does not apply]." (Appellant's App. pp 271-72). A February 28, 2006 closing was scheduled.

On February 13, 2006, Huntzinger notified Kreb's counsel by fax that as Kreb in his letter of February 7 did not accept all the terms of Huntzinger's offer, Huntzinger would treat Kreb's acceptance as a counteroffer which he, in turn, refused to accept. On the same date, Huntzinger's counsel withdrew its representation. On February 18, 2006,

Huntzinger requested an amendment to the purchase agreement, requiring Kreb to pay an additional amount towards the purchase price. In writing, Kreb's counsel refused the request for an amendment and stated that "[r]egardless of [Huntzinger's] relationship with [his] lawyers, they provided an offer on [his] behalf and [Kreb] accepted." (Appellant's App p. 315).

On February 22, 2006, Huntzinger indicated that he had no intention of providing the bill of sale until the escrow account was funded. Then, on February 28, 2006, Kreb's counsel advised Huntzinger in writing that:

> We have not received any correspondence from you concerning your intent to close the transaction in response to our letters []. We understand that you provided a bill of sale to Insured Aircraft Title Company on Monday, February 27, 2006 subject to further instructions from you. We have also received numerous inquiries and statements from [Scope] concerning this deal. In order to finalize this closing, we need written escrow instructions signed by both parties detailing the dispersal of funds and setting forth the unconditional release of the bill of sale upon those terms. The escrow agent and our client's financing company need this clearly written agreement to close the transaction.

(Appellant's App. p. 316). The February 28, 2006 scheduled closing failed to occur.

On March 27, 2006, Huntzinger took possession of the plane at Charleston Yeager airport in West Virginia without notifying Kreb and flew it to Anderson Airport in Anderson, Indiana. Without the Aircraft to conduct his business, Kreb was notified by the FAA that not only his air carrier certificate was no longer valid, but also that a concern existed that without a replacement aircraft in a certain amount of time, Kreb's certificate would have to be revoked.

The next day, March 28, 2006, the trial court, on Kreb's motion, entered a temporary restraining order *ex parte*, enjoining Foghorn, Huntzinger, and Scope from flying or removing the Aircraft from the Anderson airport until a preliminary injunction hearing could be conducted to determine whether the temporary restraining order should remain in effect and/or be expanded or limited in scope throughout the pendency of the litigation. The same day, Kreb filed a Petition for Breach of Contract, Specific Performance, Damages, and Injunctive Relief.

Thereafter, on March 31, 2006, Kreb filed a Verified Petition to Modify Temporary Restraining Order, seeking the extension and modification of the restraining order beyond its expiration date of April 7, 2006. On April 3 and 4, 2006, the trial court held a hearing on the preliminary injunction and on Kreb's petition to extend and modify the temporary restraining order. On April 10, 2006, the trial court entered findings of fact and conclusions of law terminating the temporary restraining order and ordering Kreb to return all logbooks, flight logs, and aircraft maintenance records immediately to Foghorn, as well as the two (2) Aircraft seats that Kreb had removed. Additionally, the trial court no longer placed any restrictions upon Foghorn's use or sale of the Aircraft. On April 12, 2006, Kreb unsuccessfully sought a writ of mandamus from our supreme court which would compel the trial court to issue an order prohibiting the sale or removal of the Aircraft during the pendency of the litigation.

Thereafter, respectively on April 17, 2006, and April 20, 2006, Kreb and Foghorn filed Verified Petitions for Contempt Citation against each other. Additionally, on April 24, 2006, Kreb filed a Verified Motion to Reconsider and Motion for Protective Order

claiming that Kreb's pilot logs contain confidential and proprietary information and are not included within the items that should be returned to Huntzinger under the terms of the Lease. On April 25, 2006, the trial court conducted a hearing on these pending motions and took the matter under advisement.[4]

Kreb now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Preliminary Injunction*

Kreb argues that the trial court abused its discretion in denying its request for a preliminary injunction.

A. *Standard of Review*

The grant or denial of a preliminary injunction is within the discretion of the trial court, and this court's review is limited to the determination of whether or not the trial court clearly abused that discretion. *Avemco Ins. Co. v. State ex rel. McCarty*, 812 N.E.2d 108, 117 (Ind. Ct. App. 2004). A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances, or if it misinterprets the law. *Aberdeen Apartments v. Cary Campbell Realty Alliance, Inc.*, 820 N.E.2d 158, 163 (Ind. Ct. App. 2005), *reh'g denied, trans. denied*. When determining whether or not to grant a preliminary injunction, the trial court is required to make special findings of fact and conclusions of law. *Id*. Upon review, our task is to determine if the trial court's findings support the judgment. *Id*. We will only reverse the trial court's

[4] Neither the record nor the Chronological Summary of Filings and Proceedings indicate whether the trial court decided these motions.

judgment if it is clearly erroneous. *Id*. Findings of fact are clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support them. *Id*. We will consider the evidence only in the light most favorable to the judgment and construe findings together liberally in favor of the judgment. *Id*. However, we note that an erroneous finding is not fatal to a trial court's judgment if the remaining valid findings and conclusions support the judgment, rendering the erroneous finding superfluous and harmless as a matter of law. *Lakes & Rivers Transfer v. Rudolph Robinson Steel Co*., 795 N.E.2d 1126, 1132 (Ind. Ct. App. 2003).

The discretion to grant or deny a preliminary injunction is dependent upon the following factors:

1) Whether the remedies at law available to the party seeking an injunction are inadequate, thus exposing that party to irreparable harm pending the resolution of the substantive action if the injunction does not issue;

2) Whether granting the injunction would disserve the public interest;

3) Whether the party has established a reasonable likelihood of success at trial by establishing a prima facie case; and

4) Whether the injury to the party seeking the injunction outweighs the harm to the party who would be enjoined.

Id.; *Avemco*, 812 N.E.2d at 117-18.

The moving party has the burden of showing, by a preponderance of the evidence, that the facts and circumstances entitle him or her to injunctive relief. *Indiana Family & Social Services Admin., Div. of Family and Children, Lake County Office v. Ace Foster Care and Pediatric Home Nursing Agency Corp.*, 823 N.E.2d 1199, 1204 (Ind. Ct. App. 2005). If the plaintiff fails to prove any one or more of these requirements, the trial

court's grant of a preliminary injunction constitutes an abuse of discretion. *Id*. Thus, the power to issue a preliminary injunction should be used sparingly, and such relief should not be granted except in rare instances where the law and facts are clearly in the moving party's favor. *Aberdeen Apartments*, 820 N.E.2d at 163.

B. *Remedies at Law are Adequate*

Kreb first contends that remedies at law are inadequate because without the Aircraft he cannot conduct his business and maintain his FAA issued Aircraft Certificate. In sum, Kreb asserts that "[t]he trial court well established on the record that without this particular [A]ircraft, [he] is put out of business." (Appellant's Br. p. 20). Conversely, Appellees characterize Kreb's loss as mere economic injuries which do not constitute the type of irreparable harm required for a preliminary injunction.

The object of a preliminary injunction is to maintain the status quo pending adjudication of the underlying claim. *Jay County Rural Elec. Membership Corp. v. Wabash Valley Power Ass'n, Inc*., 692 N.E.2d 905, 909 (Ind.C t. App. 1998), *trans. denied*. The necessity of maintaining the status quo is to prevent harm to the moving party which could not be corrected by a final judgment. *Id*. If irreparable harm were to occur during the course of the litigation, the judgment in effect, would be rendered meaningless. *Id*. Thus, it has been held that an injunction will not be granted where the law can provide a full, adequate, and complete method of redress. *Id*.

To decide whether an adequate remedy at law exists, the trial court is charged with determining whether the legal remedy is as full and adequate as the equitable remedy. *Crossmann Communities, Inc. v. Dean*, 767 N.E.2d 1035, 1041 (Ind. Ct. App. 2002). A

legal remedy will not be deemed adequate merely because it exists. *Id*. Injunctive relief may be granted it if is more practicable, efficient, or adequate than the remedy afforded by law. *Id*.

Here, the record shows that Kreb in his request for injunction and petition for breach of contract claims that due to Huntzinger's alleged breach of the Lease and repossession of the Aircraft, Kreb's business suffers substantially resulting in a loss of business opportunities to the point his company could cease to exist. While we empathize with Kreb's position, we agree with Appellees that these injuries represent an economic loss for which no injunctive relief can be granted.

It is a well established rule in Indiana that "the ability to obtain damages in the form of a money judgment for economic injury, represents an adequate remedy at law." *Ace Foster Care and Pediatric Home Nursing Agency Corp*., 823 N.E.2d at 1204 (quoting *Daugherty v. Allen*, 729 N.E.2d 228, 235 (Ind. Ct. App. 2000), *trans. dismissed*). In this respect, we have previously concluded that a threatened business failure is not the sort of irreparable injury against which equity protects. *Indiana State Bd. of Public Welfare v. Tioga Pines Living Center, Inc*., 575 N.E.2d 303, 306 (Ind. Ct. App. 1991), *reh'g denied, trans. denied* (citing *Dept. of Welfare v. Stagner*, 410 N.E.2d 1348, 1352-53). We stated:

> The key word in this consideration is irreparable. Mere injuries, however substantial in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Id.

Likewise, we find no merit in Kreb's argument that no legal remedy can adequately address the situation that by being refused access to the Aircraft the validity of his FAA aircraft certificate is compromised because it is based on his proven ability to fly and use this particular Aircraft in his commercial delivery business. During the hearing, Kreb testified that the FAA had advised him that "without possession of the [A]ircraft that not only was [his] certificate not valid, but there was a concern that without a replacement aircraft in a certain amount of time, the certificate would have to be revoked." (Tr. p. 80). Accordingly, his testimony reflects that instead of repossessing the Aircraft from Huntzinger by way of an equitable remedy, an alternative legal remedy exists for Kreb to re-validate his aircraft certificate upon acquiring a replacement aircraft to conduct his business.

Accordingly, because Kreb failed to prove that legal remedies are inadequate, we do not need to address Kreb's arguments with regard to the other three factors required for a preliminary injunction. *See Avemco*, 812 N.E.2d at 117-18. Thus, we find that the trial court did not clearly abuse its discretion by refusing Kreb's request for a preliminary injunction.

II. *The Flight Logs*

Next, Kreb maintains that the trial court erred in ordering him to return all logbooks, flight logs, and aircraft maintenance records.[5] In this regard, Kreb asserts that

[5] As we already noted in our Facts and Procedural History, this issue was the subject a of separate Verified Motion to Reconsider and Motion for Protective Order filed by Kreb on April 24, 2006. Even

aircraft logs, as mentioned in Article V of the Lease must be distinguished from pilot's logs, which contain information specific to the individual pilot. As he is only under a contractual duty to return the Aircraft logs, Kreb contends that he does not need to give his pilot logs to Huntzinger. On the other hand, Huntzinger now contends that in order to calculate the hourly engine charge, as stipulated in Article V of the Lease, he requires all log books.

It is a court's duty to interpret a contract so as to ascertain the intent of the parties. *McLinden v. Coco*, 765 N.E.2d 606, 611 (Ind. Ct. App. 2002). The court must accept an interpretation of the contract that harmonizes its provisions as opposed to one which causes the provisions to be conflicting. *Id*. In interpreting a written contract, the court will attempt to determine the intent of the parties at the time the contract was made as disclosed by the language used to express their rights and duties. *Id*. The unambiguous language of a contract is conclusive upon the parties to the contract and upon the courts. *Id*. Our standard of review of the interpretation of an unambiguous contract is *de novo*. *Id*. at 612.

However, if the contract is ambiguous or uncertain in its terms and if the meaning of the contract is to be determined by extrinsic evidence, its construction is a matter for the factfinder. *First Fed. Sav. Bank of Ind. V. Key Mkts., Inc*., 559 N.E.2d 600, 604 (Ind. 1990). Rules of contract construction and extrinsic evidence may be employed in giving

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though the trial court conducted a hearing on this pending motion the next day, the record and chronological history fail to include the decision reached by the trial court, if any. Regardless, in his brief, Kreb now challenges the trial court's April 13, 2006 Order requiring Kreb to return flight logs to Huntzinger.

effect to the parties' reasonable expectations. *Id*. If the ambiguity arises because of the language used in the contract and not because of extrinsic facts, then its construction is purely a question of law to be determined by the trial court. *Id*. When the court finds a contract to be clear in its terms and the intentions of the parties apparent, the court will require the parties to perform consistently with the bargain they made. *Id*.

Article V., Lease Rate, states in pertinent part that:

> B. HOURLY ENGINE OVERHAUL RESERVE COST. In addition to the payments of Base Rent, [Kreb] shall also pay to [Huntzinger] on a monthly basis at the end of each month an amount equal to Forty and no/100s Dollars ($40.00) per operating hour of the Aircraft during the preceding month (the "HOURLY ENGINE OVERHAUL RESERVE"). This amount is based upon **written statements*** of each month's usage that shall be provided to [Huntzinger] with each month's rent payment.

(Appellant's App. p. 245). *However, the term "written statements" was manually deleted and changed to "Aircraft Log." Both parties initialed this manual change. The Lease does not contain any section defining Aircraft Log.

During the April 25, 2006 hearing, the difference between Aircraft log and pilot log was clarified by both Kreb and Huntzinger. During Kreb's direct testimony, the following colloquy occurred between the trial court, Kreb, and Kreb's counsel:

> [TRIAL COURT]: Now wait a minute. Just so I understand: we're talking flight logs, but you also call that a pilot log. Is that right?
>
> [KREB'S COUNSEL]: Yes, Your Honor.
>
> . . .
>
> [KREB'S COUNSEL]: . . . And then there are aircraft logs, which have to do with the history of the maintenance of the aircraft.
>
> [TRIAL COURT]: Which you've already given over.

[KREB'S COUNSEL]: Yes, Your Honor.

. . .

[TRIAL COURT]: I'm with you. So flight log, pilot log. Okay. You're gonna tell me what that is and why it doesn't belong to [Huntzinger]. Go ahead.

[KREB]: The [] flight record for an account of a particular flight for an account of a particular flight for me as an air carrier certificate holder is required for me to justify flight, duty time limits so that the FAA can, if they see me on the ramp, they can inspect my duty day for that day and verify that I'm in compliance with the Federal Aviation Regulations pertaining to pilot or flight crew, duty and flight time limitations. There's a limit to how many hours you can operate per day, and there's a limit to how many hours you can, excuse me, be on duty each day. I'm required to keep a daily log. For a single-engine airplane, which this is, I'm not required to keep any archives, any records proving that within the last 30 days that I've flown anywhere, or met weight and balance limitations. . . .

. . .

[KREB]: This is personal property that I'm required to maintain for the FAA, and it was never engaged in any contract with [Huntzinger].

(Appellant's Suppl. App. pp. 24-25).

Subsequently, the following exchange occurred between Huntzinger and his counsel during the former's direct testimony:

[HUNTZINGER'S COUNSEL]: You were writing that in because you [w]anted the flight log book.

[HUNTZINGER]: Yes. We weren't interested in his private pilot log book, we were interested in the aircraft flight log books.

(Appellant's Suppl. App. p. 33).

Accordingly, based on the language used in Article V of the Lease and the parties clear intent as evidenced during their respective testimony, we conclude that Kreb's pilot

log is excluded from the collection of aircraft logs that should be returned to Huntzinger under the terms of the Lease. Therefore, we find that the trial court erred by mandating Kreb to return all log books and flight logs without explicitly excluding Kreb's pilot log.

CONCLUSION[6]

Based on the foregoing, we find that the trial court properly concluded that Kreb is not entitled to a preliminary injunction. However, we find that the trial court erred by ordering Kreb to turn over his pilot log to Huntzinger.

Affirmed in part, and reversed in part.

BAILEY, J., and MAY, J., concur.

[6] We recognize that Huntzinger and Foghorn raise the following single issue in their brief: Whether they are entitled to attorney fees. However, as a general rule, a party may not present an argument or issue to an appellate court unless the party raised the same argument or issue before the trial court. *See, e.g.*, *AutoXchange.com, Inc. v. Dreyer and Reinbold, Inc.*, 816 N.E.2d 40, 47 (Ind. Ct. App.2004). Consequently, since Huntzinger and Foghorn did not raise this issue to the trial court, it is now waived for our review. *Id.*